

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Detric McGowan, #94680-071,
Petitioner,

vs.

Matthew Hamidullah, Warden,
United States of America,

Respondents.

Civil Action No. 8:04-23247-GRA-BHH

REPORT OF MAGISTRATE JUDGE

The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On February 10, 2005, the respondents filed a motion to dismiss or, in the alternative, for summary judgment. By order of this court filed February 18, 2005, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment dismissal procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the petitioner elected not to respond to the motion.

As the petitioner is proceeding *pro se*, the court filed a second order on April 29, 2005, giving the petitioner through May 23, 2005, in which to file his response to the motion to dismiss or, in the alternative, for summary judgment. The petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The petitioner elected not to respond.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of

prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990).

s/Bruce H. Hendricks
United States Magistrate Judge

June 15, 2005

Greenville, South Carolina